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July 25, 2018

Via Electronic and First-Class Mail

Shonda D. Green, Secretary
Department of Telecommunications & Cable
1000 Washington St., Suite 820
Boston, MA 02118-6500

RE: D.T.C. 18-3 – Telecommunications Carrier Accounting Practices and Recordkeeping

Dear Ms. Green:

On June 25, 2018, the Department of Telecommunications and Cable ("DTC") issued an Order Opening a Notice of Inquiry ("Order") into the accounting practices, recordkeeping, and reporting requirements of telecommunications carriers, with particular focus on the data, accounting, and reporting requirements necessary to calculate pole attachment rates for poles owned by telecommunications carriers in Massachusetts. The Department of Public Utilities ("DPU") offers the following comments.

The Federal Communications Commission ("FCC") recently modified carrier reporting and accounting requirements at the federal level to, among other things, permit incumbent local exchange carriers ("ILECs") subject to price cap regulation to elect to use generally accepted accounting principles ("GAAP") instead of the Uniform System of Accounts ("USOA") for setting pole attachment rates in federal-default states. See In re Comprehensive Review of the Part 32 Unif. Sys. Of Accounts, 32 FCC Rcd. 1735, 1739-1740, 1744-1747 (2017) ("Accounting Order"); see also 47 U.S.C. § 224(b), (c). Additionally, the FCC no longer requires telecommunications carriers to file financial and operational data using Form M, and has forborne from requiring the filing of similar data in

its Automated Reporting Management Information System ("ARMIS") Reports.[1] In granting forbearance from the ARMIS reporting requirements for pole attachment data, the FCC stated that "[i]f states that adjudicate pole attachment complaints believe they need access to annual data for their own use, we expect that they may exercise their regulatory authority to require carriers to file data in those states." USTelecom Forbearance Order, 28 FCC Rcd. at 7676; Qwest/Verizon/AT&T Forbearance Order, 18483 FCC Rcd. at 18491.

The DTC seeks comment on the potential impact of the more recent FCC changes in Massachusetts, including identification of the data currently available for calculating pole attachment rates in the state. Order at 2.[2] Additionally, the DTC seeks comment on whether the DTC should establish Massachusetts-specific accounting and reporting requirements; what those requirements should be; and whether the DTC should require a carrier electing to use GAAP at the federal level to adopt FCC measures to mitigate the effects of the accounting change on pole attachment rates. Order at 2-4.

The changes to accounting and reporting requirements in the Accounting Order affect ILECs, the telecommunications carriers historically subject to Part 32 USOA requirements and other accounting rules at the federal level. See Accounting Order, 32 FCC Rcd. at 1738-1740. Verizon Massachusetts ("Verizon") is the primary ILEC in all but a handful of towns in Massachusetts, and as a result the DPU will focus its comments on the requirements applicable to Verizon and its predecessor, New England Telephone and Telegraph Company. See, e.g., DTC FY2017 Annual Report at 5 (March 1, 2018). In addition to federal accounting and reporting requirements, historically, Verizon was subject

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1 See, e.g., Accounting Order, 32 FCC Rcd. at 1746; In re Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, 28 FCC Rcd. 7627, 7647-7648, 7658-7660 (2013); In re Petition of Qwest Corp. for Forbearance from Enforcement of the Comm'n's ARMIS & 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), 23 FCC Rcd. 18483, 18490-18491 (2008) ("Qwest/Verizon/AT&T Forbearance Order"); In re Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications, 12 FCC Rcd. 8071, 8075 (1997).

2 The DPU notes that the FCC's modifications to its accounting and reporting requirements might affect other Massachusetts agencies. For example, it appears that the Massachusetts Department of Revenue ("MassDOR") relies upon FCC-established accounting categories at least in part. See, e.g., Memorandum from Joanne Graziano, Chief, Local Assessment, MassDOR, to Boards of Assessors, on Certified Telephone Valuations for Fiscal Year 2019, at 3 (June 13, 2018), *available at* https://www.mass.gov/files/documents/2018/06/12/Telephone_June_15_LETTER.pdf.

to state reporting requirements.[3] Any inquiry into changed or additional state reporting requirements first requires a comprehensive understanding of the state reporting requirements currently applicable to ILECs. Therefore, the DPU respectfully requests that the DTC confirm for the benefit of all interested parties the reporting requirements currently applicable to ILECs in Massachusetts.

Under 47 U.S.C. § 224, the rates, terms, and conditions for pole attachments are subject to regulation by the FCC, except where a state has certified to the FCC that the state regulates such rates, terms, and conditions. 47 U.S.C. § 224(b), (c); see also Accounting Order at 32 FCC Rcd. at 1745. Massachusetts has certified to the FCC that it regulates pole attachments. See States That Have Certified That They Regulate Pole Attachments, WC Docket No. 10-101, Public Notice DA 10-893 (FCC May 19, 2010); Letter from Kajal Chattopadhyay, General Counsel, DTC, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-101 (August 25, 2010). The DTC and the DPU regulate pole, duct, and conduit access and rates in Massachusetts pursuant to G.L. c. 166, § 25A, 220 CMR 45.00 et seq. ("attachment regulations"), and as addressed in a Memorandum of Agreement ("MOA") entered into by both agencies.[4] In particular, G.L. c. 166, § 25A, authorizes the DTC and the DPU to regulate the rates, terms, and conditions applicable to attachments, including determining a just and reasonable rate.

The attachment regulations provide for a complaint proceeding to determine the maximum attachment rate through the use of data inputs from annual reports filed by the utilities. See 220 CMR 45.04(2)(d). Specifically, the attachment regulations provide that data should be derived from Form M (telecommunications), FERC 1 (electric), or other

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[3] See, e.g., Verizon Alternative Regulation Plan, D.T.E. 01-31-Phase II, at 3, ¶ M (approved June 6, 2003); Greater Media, Inc. et al. v. New England Telephone & Telegraph Co., D.P.U. 91-218, at 32-41 (1992).

[4] G.L. c. 166, § 25A, references the Department of Telecommunications and Energy ("DTE"), the predecessor agency of the DTC and the DPU. Prior to April 11, 2007, regulatory jurisdiction over telecommunications and energy companies, as well as over pole and conduit access and rate disputes, resided solely with the DTE. Pursuant to Chapter 19 of the Acts of 2007, the DTE was dissolved, and the DTC and the DPU were created as separate agencies with jurisdiction, respectively, over telecommunications and energy companies. See St. 2007, c. 19 (April 11, 2007).

On October 14, 2008, the DTC and the DPU entered into an MOA to address the agencies' shared jurisdiction over the regulation of attachments to utility poles, ducts, and conduits pursuant to G.L. c. 166, § 25A, and over double poles pursuant to G.L. c. 164, § 34B. A seventh extension of this MOA remains in effect until its expiration on February 8, 2022.

reports filed with state or regulatory agencies. See 220 CMR 45.04(2)(d); A-R Cable Servs. Inc., et al. v. Mass. Elec. Co., D.T.E. 98-52, at 7 (1998) ("A-R Cable"). The attachment regulations, however, do not establish a specific method of calculation for pole attachment rates. The Department of Telecommunications and Energy ("DTE"), the predecessor agency of the DTC and the DPU, established a formula ("Massachusetts Formula") to determine the maximum attachment rate based on publicly available data. Cablevision of Boston Co. et al. v. Boston Edison Co., D.P.U./D.T.E. 97-82, at 1-2, 19 (1998) ("Cablevision"); A-R Cable at 7. Specifically, the DTE established the Massachusetts Formula to allow parties to calculate pole attachment rates without the need for agency intervention. A-R Cable at 7.

The Massachusetts Formula was developed based on account information maintained consistent with the USOA (i.e., Form M (telecommunications), FERC 1 (electric), municipal lighting plant annual returns). See 220 CMR 45.04(2)(d); Cablevision at 18-19; A-R Cable at 7-8.[5] As the FCC acknowledged in the Accounting Order, the transition from USOA to GAAP could result in changes to pole attachment rates due to factors such as depreciation rates, cost of removal, and return on investment. Accounting Order, 32 FCC Rcd. at 1746. Although, as the FCC also noted, any change would be the result of how and when costs are recognized, and not a change in the costs that may be included, the fact remains that this accounting change could result in a change to the pole attachment rates themselves. Id. at 1747.

The FCC required GAAP-electing carriers to mitigate any resulting changes in pole attachment rates in federal-default states by either (1) annually adjusting pole attachment rates by an implementation rate difference for twelve years, or (2) continuing to use USOA accounts and procedures necessary to establish and evaluate pole attachment rates. Id. at 1746-1747. If Verizon seeks to adopt GAAP for purposes of federal regulatory accounting purposes, the DTC must exercise its regulatory authority to require Verizon to continue to use USOA accounts and procedures in Massachusetts that relate to the calculation of attachment rates under the Massachusetts Formula to ensure no change in pole attachment rates results. This is particularly important where pole attachment rates for other Massachusetts pole owners (i.e., investor-owned electric distribution companies and municipal light plants) will continue to be calculated based on USOA accounts. See 220 CMR 51.00 et seq.; 220 CMR 79.02, 79.04(1); Comcast III, Inc. v. Peabody Municipal Light Plant and Peabody Municipal Lighting Commission, D.T.C. 14-2 Phase I Order at 4, 13 (2014) (citations omitted). Additionally, the DTC must ensure that this information

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[5] The annual returns filed with the DPU by municipal lighting plants pursuant to G.L. c. 164, § 63 and 220 CMR 79.00 et seq., are consistent with USOA. See Comcast III, Inc. v. Peabody Municipal Light Plant and Peabody Municipal Lighting Commission, D.T.C. 14-2 Phase I Order at 11-12 (2014), citing D.T.C. 14-2, DPU Reply Brief at 8-10.

remain publicly available to permit parties to calculate rates without intervention by the DPU or DTC.[6]

To the extent that the DTC contemplates any change to the information relied upon in the application of the Massachusetts Formula, such modification would constitute a change in the policies or procedures applicable to pole attachments. Pursuant to ¶ 6 of the MOA, any changes to the regulations, policies, or procedures applicable to pole attachments must be jointly developed and promulgated by the DPU and the DTC and must be consistent with G.L. c. 166, § 25A. Pole owners and attachers that would be affected by any change to the rates calculated under the Massachusetts Formula include electric distribution companies, telecommunications carriers, municipalities, including municipal light plants, fire and police departments, as well as cable television providers, alarm companies, and others. As a result, any joint investigation pursuant to ¶ 6 of the MOA would require notice to ensure that all affected entities have the opportunity to participate.

As the DTC notes, compliance with Executive Order 562 will be addressed in a separate, joint proceeding. See Order at 2, n.1. Pursuant to Executive Order 562, the DPU and the DTC must review the attachment regulations, in part, to eliminate "confusing, unnecessary, inconsistent, and redundant regulations." See Office of the Governor, Commonwealth of Massachusetts, Executive Order No. 562 (March 31, 2015). The DPU acknowledges that the outdated reference to Form M in the current attachment regulations may properly be addressed in the Executive Order 562 joint rulemaking.[7] However, the DTC's inquiry "to ensure proper maintenance and reporting of the data necessary for the DTC to fulfill its regulatory duties" likely will require a broader investigation into accounting and reporting requirements. This broader inquiry by the DTC, together with the required joint development of any related changes to the regulations, policies, or procedures applicable

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6 The DTC and the DPU also share jurisdiction over double poles pursuant to G.L. c. 164, § 34B. See MOA at 2, ¶ 3. Verizon submits semi-annual double-pole reports on behalf of itself and several electric distribution companies. See, e.g., Double Poles, D.T.E. 03-87, Verizon Cover Letter (filed May 21, 2018); see also D.T.E. 03-87, Hearing Officer Memorandum Allowing Amended Joint Motion (September 1, 2005). Any final action taken by the DTC in the current matter should make clear that it does not alter Verizon's reporting obligation for double poles.

7 As noted above, the current attachment regulations provide that data should be derived from Form M (telecommunications), FERC 1 (electric), or other reports filed with state or regulatory agencies. See 220 CMR 45.04(2)(d). The language in the attachment regulations referencing "other reports filed with state or regulatory agencies" would encompass any reporting requirements established by the DTC as a result of this proceeding. See 220 CMR 45.04(2)(d).

to pole attachments by the DTC and the DPU, should not delay the aforementioned Executive Order 562 rulemaking proceeding.

Thank you for the opportunity to provide these comments.

Sincerely,

/s/

Shane Early
General Counsel

cc: Angela O'Connor, Chairman, DPU
Sandra Callahan Merrick, General Counsel, DTC